

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JULY 9, 2004

Prepared on June 3, 2004

ITEM: 16

SUBJECT: Administrative Civil Liability Order No. R3-2004-0073; Pajaro Valley Unified School District, Landmark Elementary School

KEY INFORMATION

Discharger: Pajaro Valley Unified School District
Location: Ohlone Parkway & Harkins Slough Road, Watsonville, Santa Cruz Co.
Discharge Type: Construction Storm Water
Existing Order: Order No. 99-08-DWQ, NPDES General Permit No. CAS000002

SUMMARY

Pajaro Valley Unified School District (hereafter Discharger), owner of Landmark Elementary School construction site (hereafter Site) in Watsonville, was found to be in violation of the General Permit for Storm Water Discharges Associated with Construction Activity (Permit).

Regional Board staff inspected the Site on two occasions during the rainy season and found the Site in violation. During each inspection Regional Board staff discussed violations with Site personnel. After each inspection Regional Board staff mailed Notice of Violation letters to the Discharger, and mailed and faxed the letters to Site personnel. The first Notice of Violation letter specified the date on which Regional Board staff would return for a second inspection. There was ample time and adequate weather conditions for the Discharger to bring the Site into compliance before staff's second inspection. Additionally, the Site was not in compliance with the City of Watsonville's (City's) erosion control requirements.

The Regional Board Executive Officer issued a Complaint on May 21, 2004 in the amount of fifteen thousand dollars (\$15,000).

DISCUSSION

Background

The Discharger owns Landmark Elementary School (Site), currently under construction, located at Ohlone Parkway and Harkins Slough Road in Watsonville, Santa Cruz County. On June 10, 2003, the Discharger filed a Notice of Intent to comply with the terms of the NPDES General Permit for Storm Water Discharges Associated with Construction Activity (Permit). The NOI indicated construction commenced on June 1, 2003, and the Site Storm Water Pollution Prevention Plan (SWPPP) was dated May 2003.

The majority of runoff from the 8.2-acre site flows into storm drains and drainageways that discharge to a constructed unpaved basin. From interviews with a Site representative, Regional Board staff understands the basin is for post-construction storm water retention, and the basin discharges to a second (off-site) post-construction storm water basin before discharge to Struve Slough in Watsonville.

On February 19, 2004, the City complained about the Site's noncompliance with the City's erosion control requirements. The City had already

conducted two inspections of the Site and issued the owner a citation.

When Regional Board staff inspected the Site on February 23, 2004 in response to the City's complaint, the City and the Site representative both indicated there had been no improvements with respect to erosion and sediment control since the City's last inspection. Regional Board staff discussed violations with Site personnel and followed up with a Notice of Violation dated March 5, 2004. The Notice of Violation described violations noted during the inspection, required compliance with the Permit, and specified the exact date on which Regional Board staff would return to inspect the Site.

On March 19, 2004, Regional Board staff inspected the Site again, and again found the Site in violation of Permit requirements. Regional Board staff discussed violations with Site personnel and followed up with a second Notice of Violation dated March 24, 2004.

Between the two Regional Board inspections, the Discharger had sufficient time and amiable weather in which to bring the Site into compliance.

The City conducted erosion control inspections of the site on February 2, February 11, February 23, March 15, March 30, and March 31, 2004. The City found the site in non-compliance with local requirements and issued three violation letters and three citations, totaling five thousand two hundred dollars (\$5,200).

Violations

The Discharger's violations of the Permit include:

- a. discharging without appropriate BMPs,
- b. not developing a SWPPP in full accordance with Permit 'Section A,'
- c. not having the SWPPP available on site,
- d. not implementing an effective combination of erosion and sediment control on all disturbed areas during the rainy season,

- e. not documenting and/or implementing sediment control BMPs as required in Permit 'Section A,'
- f. not inspecting, maintaining, and repairing BMPs,
- g. not having appropriately trained personnel for site inspection and BMP maintenance,
- h. not having inspection and monitoring records,
- i. not complying with local requirements.

These violations are described in greater detail in the attached "ACL Complaint No. R3-2004-0073." Corresponding Permit sections that were violated are listed in the attached "Applicable Permit Requirements." (For the reader's convenience, this document and both attachments use the same 'numbering' system for the above-listed violations.)

The minimum violation period extends from Regional Board staff's first inspection on February 23, 2004 to Regional Board staff's second inspection on March 19, 2004, twenty-six days. This is a conservative estimate since Regional Board staff has evidence documenting the Discharger's non-compliance with City requirements (which is a Permit violation) from February 2, 2004 to March 31, 2004, fifty-nine days. Additionally, evidence indicates the Discharger had an inadequate SWPPP (which is a Permit violation) from construction commencement on June 1, 2003, to March 19, 2004, two hundred eighty-eight days.

This ACL is issued to address the Discharger's failure to comply with Permit requirements despite sufficient discussion with and notification from Regional Board staff. Since self-monitoring and voluntary compliance with Permit requirements are important aspects of the Storm Water Program, the Discharger's continued defiance of local, state, and federal regulations despite inspections, citations, and violation letters, warrants formal enforcement action. Permit non-compliance is a serious violation, however, consideration of less than the maximum liability may be warranted because allegations are limited to permit non-compliance and *potential* water quality impacts, not *proven* water quality impacts.

CIVIL LIABILITY

Recommended Liability

After considering factors specified in California Water Code Section 13385, maximum and minimum penalties, and staff time, Regional Board staff and the Executive Officer recommend liability of fifteen thousand dollars (\$15,000). Detailed discussion of each factor can be found in the attached "ACL Compliant No. R3-2004-0073."

Maximum Liability

Pursuant to California Water Code Section 13385, the Regional Board can impose civil liability up to ten thousand dollars (\$10,000) per day of violation of waste discharge requirements. Waste discharge requirements include NPDES permits (California Water Code Section 13374). The Discharger was in violation of the Permit for at least twenty-six days. Maximum liability that may be imposed by the Regional Board is two hundred sixty thousand dollars (\$260,000). The Discharger violated multiple provisions of the Permit during this period. The \$260,000 maximum liability is a conservative estimate because it counts only one violation per day.

Minimum Liability

In accordance with California Water Code Section 13385, the minimum liability that may be imposed is recovery of economic benefit or savings (if any) derived from the violations. Although the Discharger likely realized some cost savings from noncompliance (having an inadequate SWPPP, not implementing the SWPPP, not implementing appropriate BMPs, not maintaining BMPs, and not hiring qualified personnel to conduct Site storm water inspection), Regional Board staff does not have sufficient information to determine the actual economic benefit derived by not complying with

the Permit. The proposed liability of fifteen thousand dollars (\$15,000) (or a daily average of five hundred seventy-seven dollars (\$577)) is likely greater than economic savings realized by the Discharger during the period of violation, and would therefore meet California Water Code Section 13385 specifications for assessing at least the minimum liability.

Staff Time

Regional Board staff spent time responding to the City's complaint, traveling to and inspecting the Site, and preparing and reviewing enforcement documents. Estimated staff costs (including Regional Board technical staff, administrative staff, supervisors, and legal counsel) are five thousand five hundred fifty dollars (\$5,550), or seventy-four hours at seventy-five dollars (\$75) per hour.

RECOMMENDATION

Regional Board staff recommends assessment of fifteen thousand dollars (\$15,000) in administrative civil liability against Pajaro Valley Unified School District for Permit violations occurring February 23, 2004 through March 19, 2004.

ATTACHMENTS

1. Applicable Permit Requirements
2. Administrative Civil Liability Complaint No. R3-2004-0073
3. Administrative Civil Liability Order No. R3-2004-0073